

Title	Small Claims: Service of Claim and Order (Amend Code Civ. Proc., § 116.330, 116.340)
Summary	The committee is proposing that the Judicial Council sponsor legislation that would allow a small claims plaintiff to serve the claim by certified mail and file proof of service or an acknowledgment of receipt with the small claims court at least three days before the hearing.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Currently, the small claims clerk is authorized to serve a defendant with the claim and notice of small claims hearing by mail with a return receipt (certified mail) under Code of Civil Procedure sections 116.330 and 116.340. However this method of service is usually not effective because the defendant often does not sign the return receipt. This procedure may therefore unnecessarily waste court resources and disappoint the plaintiff because service could not be made.</p> <p>The committee is circulating for comment proposed legislation to amend Code of Civil Procedure sections 116.330 and 116.340 to:</p> <ol style="list-style-type: none"> <li>1. Allow the small claims plaintiff instead of the small claims court to serve the claim and notice of hearing by mail with a return receipt to the small claims plaintiff,</li> <li>2. Allow the small claims plaintiff to serve the claim and notice of hearing with notice and acknowledgment of receipt on a Judicial Council form and a postage prepaid envelope addressed to the small claims plaintiff, and</li> <li>3. Require the plaintiff to file proof of service of the claim and notice with the small claims court at least three days before the hearing.</li> </ol> <p>Eliminating service of the claim and notice of hearing by certified mail was proposed as a cost saving measure for the courts. An informal survey of court clerks yielded mixed responses. Some court managers suggested that service by certified mail should be retained because it is the least expensive method to serve a defendant and sometimes it is the only way that the defendant can be served if the only known address for the defendant is a U.S. post office box. Another court manager suggested that defendants might refuse to sign the receipt of certified</p>

mail because the return address is listed as the court address. It was noted that options available to parties in a general civil case such as service by publication, or in an unlawful detainer case by posting and mailing, are not available to the plaintiff in small claims court. The relatively short time for setting a case for hearing after the claim is filed might preclude service by publication. Service by publication is also time consuming, expensive, and might not give the defendant actual notice of the claim and hearing date. A committee member suggested adding service by acknowledgment and receipt, patterned after Code of Civil Procedure section 415.30 and forms 982(a)(4) and FL-605. Given these divergent views, the proposal is being circulated for wider input.

The text of the proposed amendments follows.

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Attachment

Code of Civil Procedure sections 116.330 and 116.340 would be amended to read:

**116.330. Filing of Claim Form—Order to Appear—Hearing Date.**

(a) When a claim is filed, the clerk shall schedule the case for hearing ~~in accordance with subdivision (e)~~ and shall issue an order directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense. The case shall be scheduled for hearing at least 30 days but not more than 70 days from the date of the order.

(b) In lieu of the method of setting the case for hearing described in subdivision (a), at the time a claim is filed ~~the clerk may do all of the following~~ procedures may be followed:

- (1) The plaintiff may ~~cause~~ a copy of the filed claim to be mailed to the defendant by any form of mail providing for a return receipt with the name and address of the plaintiff written on the return receipt.
- (2) On receipt of proof that the claim was served as provided in paragraph (1), the clerk may issue an order scheduling the case for hearing in accordance with subdivision ~~(e)~~ (a) and directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.
- (3) The plaintiff may ~~cause~~ a copy of the order setting the case for hearing and directing the parties to appear, to be served upon the parties by any form of mail providing for a return receipt with the name and address of the plaintiff written on the return receipt.

~~(c) If the defendant resides in the county in which the action is filed, the case shall be scheduled for hearing at least 15 days but not more than 40 days from the date of the order. If the defendant resides outside the county in which the action is filed, the case shall be scheduled for hearing at least 30 days but not more than 70 days from the date of the order.~~

~~(d) If there are two or more defendants and one or more of them resides outside the county in which the action is filed, the date for the appearance of all the defendants shall be at least 30 days but not more than 70 days from the date of the order.~~

~~(e) A public entity, as defined in Section 811.2 of the Government Code, which files more than 10 claims at one time may request a date for the appearance of the defendant later than that otherwise specified in this section, and the clerk may set the case for hearing at that later date subject to the following limits:~~

- ~~(1) If all defendants reside in the county in which the action is filed, the date for appearance shall not be more than 70 days from the date of the order.~~

~~(2) In other cases, the date for appearance shall not be more than 90 days from the date of the order.~~

#### **116.340. Service on Defendant**

(a) Service of the claim and order on the defendant may be made by any one of the following methods:

~~(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.~~

~~(2)~~ (1) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

~~(3)~~ (2) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

~~(4)~~ (3) The clerk plaintiff may cause a copy of the filed claim to be mailed, the order to be issued by the clerk upon proof of signed receipt of the claim, and a copy of the order to be mailed by the plaintiff as provided in subdivision (b) of Section 116.330.

(4) The plaintiff may cause a copy of the filed claim and order to be mailed (by first class mail or airmail postage prepaid) to the person to be served, together with two copies of a notice and acknowledgement of receipt form developed by the Judicial Council and a return envelope, postage prepaid, addressed to the sender. Service shall be deemed complete on the date a written acknowledgment of receipt of the claim and order is executed, if such acknowledgment thereafter is returned to the sender.

(b) Proof of service of the claim and order must be filed with the small claims court at least three days before the hearing.

~~(b)~~ (c) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(e) (d) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established

83 by other competent evidence, whichever applies to the method of service  
84 used.

85 ~~(d)~~ (e) Service shall be made within this state, except as provided in subdivisions (e)  
86 and (f).

87 ~~(e)~~ (f) The owner of record of real property in California who resides in another  
88 state and who has no lawfully designated agent in California for service of  
89 process may be served by any of the methods described in this section if the  
90 claim relates to that property.

91 ~~(f)~~ (g) A nonresident owner or operator of a motor vehicle involved in an accident within  
92 this state may be served pursuant to the provisions on constructive service in  
93 Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether  
94 the defendant was a nonresident at the time of the accident or when the claim  
95 was filed. Service shall be made by serving both the Director of the  
96 California Department of Motor Vehicles and the defendant, and may be  
97 made by any of the methods authorized by this chapter or by registered mail  
98 as authorized by Section 17454 or 17455 of the Vehicle Code.

99 ~~(g)~~ (h) If an action is filed against a principal and his or her guaranty or surety  
100 pursuant to a guarantor or suretyship agreement, a reasonable attempt shall  
101 be made to complete service on the principal. If service is not completed on  
102 the principal, the action shall be transferred to the court of appropriate  
103 jurisdiction.